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**Book review of Amanda Perry-Kessaris. 2009. Law in the Pursuit of
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POWER, Helen (2007) 'Pitcairn Island: Sexual Offending, Cultural Difference and Ignorance of the Law', *Criminal Law Review*, 609–629.

ROBERTS-WRAY, Kenneth (1966) *Commonwealth and Colonial Law*. London: Stevens & Sons.

Law in the Pursuit of Development: Principles into Practice

Edited by Amanda Perry-Kessaris, London, Routledge, 2009. 292pp.

ISBN 978-0-415-48589-0 £75.00 hardback

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Once declared moribund, Law and Development (L&D) has made a remarkable comeback since the 1990s. The advent of good governance and the promotion of the rule of law, as well as the growing regulation of economic transactions and intellectual property, have brought law back to the centre of debates about economic development. Policies and projects range from the reform of the judiciary on the African continent and constitutional reforms in Latin America to drafting legislation on foreign direct investment and the distribution of generic drugs. Lawyers and legal experts are in high demand, eclipsing in some areas even the long-dominant economic experts. In fact, it has become very difficult to keep abreast of developments in the quickly expanding field of L&D. Anyone who quickly wants assistance in getting an overview of this highly dynamic and important field of development will therefore welcome *Law in the Pursuit of Development*, edited by Amanda Perry-Kessaris. The book features fourteen chapters covering various aspects of current L&D, ranging from topics rarely found in discussions about L&D such as the potential of political consumerism (Wheeler) and women in Kenyan horticulture (Stewart) to more familiar themes such as the accountability mechanisms of multilateral development banks (Nanwani) and the World Bank's rule-of-law assistance (Faundez, Hammergren, Decker).

The target audience of the volume are primarily 'law and development generalists', as Perry-Kessaris states in her brief introduction. This is also reflected in the composition of the authors, which includes academics, consultants and activists, most of them with a legal background. The volume focuses on three themes: (i) the relationship between the private sector and public interest (Chapters 2–6); (ii) the importance of participation and accountability (Chapters 7–9); and (iii) the 'rule of law as fundamental building block of development' (p. 1)

(Chapters 10–15). This quotation from Perry-Kessaris's introduction indicates that she has little patience with those critics who have been mounting a fundamental critique of rule of law policies, such as Nader and Mattei (2008). By contrast, her volume advances a squarely applied perspective to L&D. Her five-step plan is a fairly conventional implementation model beginning with Assessment of the existing law, then Building capacity in the form of infrastructure and human resources, followed by Contesting 'existing and future rights and duties' (p. 5), Delegation of tasks and responsibilities for legal reform projects, concluding with Evaluation. Whether this ABC is actually the magic bullet seems rather doubtful considering the troubled history of development interventions. More reflection on the well-known problems surrounding project design and implementation would not have been a superfluous exercise, even or perhaps especially in a more hands-on volume mainly addressed to a non-academic audience.

The volume would have benefited greatly from at least a brief review of the sprawling literature on L&D in the introduction. Only two chapters (Faundez and Taylor) engage with L&D scholarship while the majority of the other chapters adopt a more applied perspective. A systematic review of the relevant literature would have made the volume's contribution to L&D scholarship more explicit. L&D scholarship is a highly heterogeneous and dynamic amalgam of researchers and practitioners of various political stripes, which 'remains singularly refractory to bounding exercises' (Newton, 2006, p. 177). Perry-Kessaris laments the lack of coherence and a 'systematic way of classifying our discussions' (p. 4). A first step towards achieving this would be to tell the story of L&D as is done, for instance, in a recent volume co-edited by one of the leading scholars in L&D (Trubek and Santos, 2006). Other publications that come to mind are Tamanaha's comprehensive review article on L&D (1995) or Rose's elucidating study of the 'New' L&D in Vietnam (1998), not to mention Trubek and Galanter's seminal article (1974) considered by many to be L&D's epitaph – rather prematurely as it turned out. It is this volume's main drawback that these and other influential publications are barely discussed.

One exception is Taylor's analysis of the current rule-of-law moment in Japan in the tenth chapter. Taylor's chapter is one of the strongest in the volume.

She critically reviews the relevant literature and presents a concise yet comprehensive account of the history of rule-of-law assistance in Japan. The Japanese government has supported legal technical co-operation programmes since the mid 1990s, focusing primarily on South East and Central Asia. Japan is an interesting case since historically the country has been an importer of foreign legal ideas, rather than an exporter. Taylor's account of Japanese narratives of L&D is skilful, showing how the official narrative of Japanese non-litigiousness is actually a myth that obscures the use of law as an instrument of social control both in Japan itself and in the colonial territories acquired during the era of imperial expansion. She further highlights the difficulties experienced by Japanese L&D practitioners in reconciling the marginality of law in the official narrative of Japan's economy with the L&D paradigm ascribing law a crucial role in economic development. In general, Taylor succeeds well in drawing out the political agenda driving Japanese L&D, a trait shared with other donor countries.

The next chapter, by Faundez, is the other exception. He presents a comprehensive account of the development of L&D thinking in the World Bank. He shows that the Washington Consensus and the one-size-fits-all approach continue to dominate the Bank's attitude to legal and judicial reform in spite of claims to the contrary. Faundez argues that this was not inevitable, however. At one point it seemed as if the Bank would develop a more comprehensive approach based on Sen's broader concept of development, but eventually it was decided 'to quietly discard the alternative vision of development' (p. 197), as Faundez wryly concludes.

The other chapters under the third heading 'Instituting the rule of law' do not match Taylor's and Faundez's combination of theoretical insight and critical distance, although Decker provides an informative overview over World Bank rule-of-law programmes in 'fragile states' like Sri Lanka, the Gambia or Guatemala. McAuslan's chapter serves as antidote to the rosy and optimistic vision espoused by many advocates of L&D. He paints a bleak picture of the situation in Afghanistan, where the crucial issue of land reform is not being addressed due to the 'sheer muddle, confusion, competition and non-cooperation that exist between and amongst agencies operating in Afghanistan' (p. 282). By contrast, Sahovic's abstract 'cultural theory' framework to assess the 'sociocultural viability of rule-of-law policies in post-conflict societies' (p. 254) is much less convincing. It is based on problematic assumptions about culture likely to send

shivers down the spines of most anthropologists. Except for Sahovic's, the chapters under the third heading (Chapters 10–15) fit well together, covering bilateral rule-of-law assistance in Asia (Taylor), the World Bank's policies (Faundez, Hammergren, Decker) and the predicaments of legal assistance in volatile places like Afghanistan (McAuslan).

Turning to the first and second heading, the selection of topics is more diverse. The chapters under the first heading (Chapters 2–6) address various aspects of the relationship between private and public interests in several domains. The second chapter, by Wheeler, makes a case for political or ethical consumerism as a way to protect the interests of producers of foodstuffs in the South. Wheeler is very optimistic, maybe overstating consumers' influence in a field dominated by powerful Northern corporate interests. The third chapter, by Stewart, on the role of women in Kenya's agricultural sector places more trust in a regulatory framework. She demands a regime of 'robust human-rights-based gender audits' (p. 41) to protect the interests of female labourers. The fourth and fifth chapters address intellectual property rights, an area of law that has been gaining increasing salience in the field of legal assistance. Vadi presents an interesting analysis of the tension between striving for better access to medicines and intellectual property rights. According to Vadi, intellectual property rights should not compromise public health and basic human rights. Macmillan, in Chapter 5, also examines intellectual property law but from a less normative angle. Her sophisticated analysis of human rights agreements and WTO agreements indicate a clash between these two regimes with the WTO agreements threatening cultural self-determination. Also sceptical about the possibilities of reconciling private property with public interest is Chapter 6, by Kohli and Menon, who present a study of environmental legislation in India to show how liberalisation may threaten the public interest.

Chapters 7–9 fall under the second heading, 'Participation and accountability'. Nanwani's chapter presents an overview of the various accountability mechanisms of the multilateral development banks, especially the World Bank's Inspection Panel. The eighth chapter, by Kotsakis, is more critical. He suggests that the recent shift in debates about biodiversity towards community participation in the South actually excludes local communities who are framed either in terms of traditional 'stewards' or 'managers' of biodiversity in favour of actors who have little regard for local concerns. Chapter 9, by McLaughlin, on stock exchanges in East Africa presents an optimistic

assessment of the future of the legal and financial infrastructure in East Africa. The stock exchanges have received substantial US support for this reform but have been slow to adopt the US arbitration mechanisms. Viewed against the background of the controversy about the efficacy of current securities arbitration in the US, this could be a blessing in disguise, according to McLaughlin, since it might allow for the development of a unique hybrid dispute-resolution system.

Law in the Pursuit of Development will be valued by students, scholars and practitioners who want to get a quick overview of current trends in L&D. It addresses important issues such as intellectual property rights, accountability mechanisms and rule-of-law assistance. The volume's main weakness is the absence of an introductory chapter positioning it in relationship to other L&D scholarship and development studies. The chapters by Macmillan, Kotsakis, Taylor and Faundez stand out because of their critical distance and nuanced analysis of the role of law in development.

Spatializing Law: An Anthropological Geography of Law in Society

Edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Anne Griffiths, Farnham, Ashgate, 2009. 225 pp. incl index.

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I came to read this book as part of my research on the spatialisation project of the European Union, a key aspect of which is the extent to which territory and space have made an incursion into constitutional law-making, and the possible practical effect of this in terms of the legal construction of an idea of a single European territory. Whilst providing lots of stimulating material for this project, the geographical scope and intellectual breadth of *Spatializing Law* caused me to think more critically about my project, in particular how it represents a binary (law and geography) approach which has hitherto glossed over the complexities and pluralistic nature of law from a spatial perspective. I am very pleased to have read the book for this alone. But additionally, the book took me straight back to the roots of my interest in 'law and geography' scholarship and made me assess the development and limitations of this 'movement' anew, especially the added value of an anthropological perspective.

References

- NADER, Laura and MATTEI, Ugo (2008) *Plunder: When the Rule of Law is Illegal*. Hoboken: Wiley-Blackwell.
- NEWTON, Scott (2006) 'The Dialectics of Law and Development', in David Trubek and Alvaro Santos (eds) *The New Law and Economic Development: A Critical Appraisal*. Cambridge: Cambridge University Press, 174–202.
- ROSE, Carol V. (1998) 'The "New" Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study', *Law and Society Review* 32: 93–140.
- TAMANAH, Brian Z. (1995) 'The Lessons of Law-and-Development Studies', *The American Journal of International Law* 89: 470–86.
- TRUBEK, David and GALANTER, Marc (1974) 'Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States', *Wisconsin Law Review* 1974: 1062–1101.
- TRUBEK, David and SANTOS, Alvaro (eds) (2006) *The New Law and Economic Development: A Critical Appraisal*. Cambridge: Cambridge University Press.

Spatializing Law is a critical and welcome response to the 'traditional' (if it is old enough to be seen as traditional) 'law and geography' approach to thinking about space and place in law, which has made strides in the identification and use of spatial metaphors 'to characterise social spaces in order to delineate the places where law is being made and put into practice' (p. 2). The contribution made by this book is to offer a series of interwoven interdisciplinary connections – a type of 3D intellectual screen – between law, geography and anthropology. The 'extra dimension' of anthropology is vitally important to the subject matter of the book. Whereas, the editors say, 'most work in the geography of law and in legal studies has mainly focused on law and space in the context of state law in industrialized states in Europe and America, with an urban bias' (p. 4) – a fair enough critique:

'most people live under plural legal constellations... they negotiate one set of rules relating to personal law, such as customary law, with another such as religious or international human rights law (reflecting a more transnational dimension) along with state law that also reflects a degree of heterogeneity.' (p. 4)

For this reason, the editors argue, 'legal pluralism deserves a central position in the analysis of law in space' (p. 4), particularly because under such conditions